

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**MALCOLM JAMAL HUSBAND**

**APPELLANT**

**V.**

**NO. 2015-KA-00558-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**Mollie M. McMillin, MS Bar No. 102708  
INDIGENT APPEALS DIVISION  
OFFICE OF STATE PUBLIC DEFENDER  
Post Office Box 3510  
Jackson, Mississippi 39207-3510  
Telephone: 601-576-4290  
Fax: 601-576-4205  
Email: mmcmi@ospd.ms.gov**

**Counsel for Malcolm Jamal Husband**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Malcolm Jamal Husband, Appellant
3. Honorable Haldon J. Kittrell, District Attorney
4. Honorable Prentiss Greene Harrell, Circuit Court Judge

This the 24th day of August, 2015.

Respectfully Submitted,

INDIGENT APPEALS DIVISION  
OFFICE OF STATE PUBLIC DEFENDER

/s/ Mollie M. McMillin  
Mollie M. McMillin, Appellant Counsel

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**BRIEF OF THE APPELLANT**

**STATEMENT OF THE ISSUES**

- Issue I: The trial court erred in granting Jury Instruction 7 regarding the Castle Doctrine and applying the doctrine and presumptions to the decedent. The Instruction ultimately provided a presumption to the State that the victim's actions were justified and that Husband's actions were not.
- Issue II: The trial court erred in denying Husband's motion for directed verdict. The evidence was insufficient to support a finding that Husband was not acting in self-defense when he shot the decedent.
- Issue III: The trial court erred in denying Husband's motion for new trial. The overwhelming weight of the evidence shows that Husband acted in self-defense when he shot the decedent, who was standing in the door of Husband's car holding a gun.
- Issue IV: Husband received constitutionally ineffective assistance of counsel when his trial counsel failed to request a Castle Doctrine instruction on Husband's behalf, depriving him of having the jury instructed on a presumption that would have benefitted his defense.

**STATEMENT OF THE CASE**

This appeal proceeds from the circuit court of Marion County and a judgment of conviction for manslaughter entered against Malcolm Jamal Husband. (C.P. 160, R.E. 7).

Husband was convicted after a jury trial on January 12-13, 2015, the Honorable Prentiss Harrell,

Circuit Judge, presiding. Husband was sentenced to twenty years, with ten years suspended, in the custody of the Mississippi Department of Corrections. He was further ordered to pay a \$5000 fine, court costs, and restitution. (C.P. 160, R.E. 7). Husband filed a motion for new trial, which was denied by the circuit court. (C.P. 169,176, R.E. 10-13). He is presently incarcerated and appeals to this Honorable Court for relief.

### **STATEMENT OF THE FACTS**

On November 15, 2013, Malcolm Husband drove to his aunt and uncle's home on Highway 13 S in Columbia. (Tr. 347-48). He had his stepson with him, who was around 10 or 11 years old. (Tr. 347, 331, 317, 275). Husband knocked on his aunt and uncle's door and went inside and sat for a while. (Tr. 348). His stepson went back outside to talk on the phone. (Tr. 348, 332). Husband came outside onto the porch of the home, which was shared with the other occupants of the duplex. Phylicia Stokes and her boyfriend, Forester Crenshaw, residents of the other side of the duplex, were on the porch. (Tr. 348).

Stokes and Crenshaw were celebrating Crenshaw's birthday with a fish fry and having drinks on the porch. (Tr. 268-69). Stokes testified that Husband arrived and "stumbled" up the steps of the porch to his aunt and uncle's door. (Tr. 271). According to Stokes, Husband knocked on his aunt and uncle's door, but they did not answer. He then started talking to her and Crenshaw. Husband asked Crenshaw for a beer, and Crenshaw gave him one. (Tr. 271). Husband's aunt and uncle had a prior dispute with Stokes over the noise from Stokes's side of the duplex. (Tr. 348). Stokes said Husband got in her face about settling the dispute with his aunt and uncle, then Crenshaw inserted himself into their conversation. Crenshaw pushed Husband away from Stokes and made a remark about respecting her and their home. (Tr. 271). Husband testified that Stokes "caught an attitude" with him when he mentioned the dispute to

her. (Tr. 350). Crenshaw went inside the house and came right back out. (Tr. 271).

When Crenshaw came back out on the porch, he and Husband stood face-to-face, each repeating “Now what?” at the other. (Tr. 272). Crenshaw took off a necklace he was wearing and handed it and his drink to Stokes. (Tr. 272). Husband then headed down the steps to leave in his car, and mumbled something as he walked away. (Tr. 272, 373).

Crenshaw followed Husband down the steps. (Tr. 373). He walked to Stokes’s car and retrieved a handgun she kept in the glove box of the car. (Tr. 273). At the same time, Husband went to his car and got in the driver’s side, and sat down. (Tr. 273). Crenshaw walked around the back of Husband’s car and got in the doorway, standing between Husband and the driver’s side door. (Tr. 273, 297, 313). Crenshaw was holding the gun at his side, pointed at Husband and his stepson. (Tr. 287, 336, 355, 364). Husband’s stepson testified that Crenshaw threatened to kill them. (Tr. 334). Crenshaw asked Husband what he was reaching for, and Husband replied, “Nothing.” (Tr. 273). According to Husband and his stepson, Crenshaw made Husband drop his car keys. (Tr. 332, 353). Husband’s aunt and uncle – the McGowans – came out of their house and asked what was going on. (Tr. 273, 313). Stokes asked them to tell Husband to leave because he was “causing confusion.” (Tr. 273). Mr. McGowan asked him to leave, but Husband said he could not leave because Crenshaw would not let him. (Tr. 313, 297, 334, 355). At some point, Crenshaw turned to the McGowans on the porch, and Husband had an opportunity to get his own weapon and fire at Crenshaw. (Tr. 273, 356). According to Stokes, when the McGowans came outside to see what the problem was, Crenshaw put his gun in his pocket. (Tr. 288). Husband denies that Crenshaw had put his gun into his pocket when the McGowans came out. (Tr. 367).

Stokes testified that when Crenshaw saw the gun pulled on him, he ran around to the back

side of the neighbors' car. (Tr. 274). It was then that Husband shot three or four times. (Tr. 274). Crenshaw was shot and asked Stokes to call 911. (Tr. 274). Husband sat back in his car, and Crenshaw shot at him as he was backing up to leave. (Tr. 274). Husband fired again through the passenger window of the car. (Tr. 274).

Winfor McGowan, Husband's uncle, testified that when he asked Husband to leave, Husband responded that Crenshaw would not let him. (Tr. 313). He asked Crenshaw to let Husband leave, and Crenshaw turned to him and gave him a "bad" look, like "F you." (Tr. 314). McGowan said that after a few minutes of Crenshaw standing in Husband's car door, Husband came up shooting, into the air. (Tr. 316). McGowan testified that Husband was not trying to shoot Crenshaw. (Tr. 316). He testified that when Crenshaw ran around the back of the car, Husband shot him. (Tr. 316).

There is no dispute that Husband fired the first shot. (Tr. 275, 317). Stokes testified that when Husband first arrived at the house, he was loud. But he never threatened her. (Tr. 277). Further, Stokes's testimony shows that Husband went down the steps to leave first; Crenshaw armed himself and followed Husband to his car. (Tr. 293). Crenshaw was blocking Husband from leaving. Husband testified that he believed that Crenshaw was going to kill him or his stepson. (Tr. 358). Husband shot Crenshaw as he was turning back around toward him, when he was still standing in the car door. (Tr. 358). Crenshaw then ran. (Tr. 375).

Husband then got out of the car and followed Crenshaw around the back of the car. (Tr. 359). Husband fired more shots into the air. (Tr. 375, 382). Crenshaw was still on his feet, walking toward Husband's car shooting. (Tr. 375). Crenshaw was transported to Forrest General Hospital in Hattiesburg. (Tr. 167). He died later that night from his injuries. (Tr. 177). The autopsy showed that Crenshaw died from a gunshot wound to the left side of his back. (Tr. 186,



187, Ex. E-1). The shot was “distant to intermediate” range. (Tr. 198). The injury could have been consistent with someone turning around as they were shot. (Tr. 196).

Husband was arrested at his home in Columbia a short time after the shooting. The officer who stopped him found on the passenger side of the car and around the passenger door. (Tr. 121). The investigation of the scene of the shooting showed that the majority of the shell casings found were between a car parked on the side of the house and an oak tree. (Tr. 145). Five of the shell casings were from the gun Crenshaw was shooting – a .380. (Tr. 149). They were found on the passenger side of the car on the ground. (Tr. 149).

### **SUMMARY OF THE ARGUMENTS**

The trial court erred in granting the State a jury instruction on the Castle Doctrine as it related to the victim. The Castle Doctrine is part of the justifiable homicide statute and provides a presumption for those accused of homicide that, under certain circumstances, their actions were reasonable. By granting the instruction for the State, the trial court essentially granted a presumption to the State that the victim acted reasonably while the defendant acted unreasonably. Because the instruction was prejudicial to Husband’s defense that he acted in self-defense, Husband respectfully requests this Court grant reverse his conviction and sentence and grant him a new trial.

Second, the trial court erred in denying Husband’s motion for directed verdict and the motion for new trial, as there is insufficient evidence to sustain the verdict, and the verdict is against the overwhelming weight of the evidence. There is no dispute that Crenshaw was the initial aggressor in this case, and that he armed himself before initiating further confrontation with Husband. The State has not met its burden to prove that Husband did not act in self-defense, beyond a reasonable doubt.

Finally, Husband received constitutionally ineffective assistance of counsel for failing to properly object to the State's proffered Castle Doctrine instruction and for failing to proffer an instruction on the Castle Doctrine on Husband's behalf. Had Husband's trial counsel requested the Castle Doctrine instruction, there would likely have been a different result at trial. Specifically, Husband would have had a properly instructed jury with the proper presumptions in place regarding his acting in self-defense.

### **ARGUMENT**

**Issue I: The trial court erred in granting Jury Instruction 7 regarding the Castle Doctrine and applying the doctrine and presumptions to the decedent. The Instruction ultimately provided a presumption to the State that the victim's actions were justified and that Husband's actions were not.**

#### **Standard of Review.**

The Mississippi Supreme Court has outlined the following standard of review for challenges to jury instructions: "Jury instructions are within the discretion of the trial court and the settled standard of review is abuse of discretion. The jury instructions are to be read as a whole, with no one instruction to be read alone or taken out of context. When read together, if the jury instructions state the law of the case and create no injustice, then no reversible error will be found." *Watkins v. State*, 101 So. 3d 628, 635 (Miss. 2012), as modified on denial of reh'g (Dec. 13, 2012).

The State requested a jury instruction on the Castle Doctrine, applied to the *victim* in this case. (Instruction 7, C.P. 121, R.E. 4). The trial court granted the instruction over defense objection. (Tr. 390-91). The instruction that was given to the jury is as follows:

The Court instructs the jury that if you find from the evidence in this case beyond a reasonable doubt that, on or about November 14, 2013, James Forester Crenshaw was an inhabitant, occupant and resident of the dwelling house at 1275 Highway 13 South, Marion County, Mississippi, then you should presume James

Forester Crenshaw was entitled, under the law, to use whatever force or weaponry that would have been reasonably necessary for him to meet and repel any attack upon himself and the other inhabitants of the residence, which may have been mounted or caused by the defendant, Malcolm Husband.

(C.P. 121, R.E. 4).

The jury instruction comes from Mississippi Code Annotated § 97-3-15(3), which states:

(3) A person who uses defensive force shall be presumed to have reasonably feared imminent death or great bodily harm, or the commission of a felony upon him or another or upon his dwelling, or against a vehicle which he was occupying, or against his business or place of employment or the immediate premises of such business or place of employment, if the person against whom the defensive force was used, was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered, a dwelling, occupied vehicle, business, place of employment or the immediate premises thereof or if that person had unlawfully removed or was attempting to unlawfully remove another against the other person's will from that dwelling, occupied vehicle, business, place of employment or the immediate premises thereof and the person who used defensive force knew or had reason to believe that the forcible entry or unlawful and forcible act was occurring or had occurred. This presumption shall not apply if the person against whom defensive force was used has a right to be in or is a lawful resident or owner of the dwelling, vehicle, business, place of employment or the immediate premises thereof or is the lawful resident or owner of the dwelling, vehicle, business, place of employment or the immediate premises thereof or if the person who uses defensive force is engaged in unlawful activity or if the person is a law enforcement officer engaged in the performance of his official duties;

Miss. Code Ann. §97-3-15(3).

The presumptions of the Castle Doctrine apply to the person who uses defensive force, not the person against whom force was used. *See id.* Crenshaw is the victim in this case. The Castle Doctrine provides a presumption for a defendant, not for a victim, if the defendant can satisfy the requirements. The Castle Doctrine, the basis for the instruction, appears in the justifiable homicide section of the criminal law statutes. Miss. Code Ann. § 97-3-15. It clearly was designed to apply to those accused of killing another; it does not apply to those who were killed.

The instruction was prejudicial to Husband's defense. In a self-defense case, the defendant does not have a duty to prove that he acted in self-defense. Rather, the State must prove that the defendant did *not* act in self-defense. *Knight v. State*, 157 So. 3d 839, 843 (¶17) (Miss. Ct. App. 2015) (citing *Hammond v. State*, 119 So. 3d 1074, 1078 (¶15) (Miss. Ct. App. 2013)). The instruction allowing the jury to presume that Crenshaw was in imminent fear of his life lessened the State's burden of proof. Further, in order to overcome that presumption, Husband would have been required to put on evidence and prove that he was justified in shooting Crenshaw first. The supreme court has held that "[i]t is axiomatic that the burden of proof never shifts to a defendant during a criminal trial . . . . The prosecution always has the burden of proving the guilt of [the] accused beyond a reasonable doubt, [the] accused never has the burden of satisfying the jury of his innocence, or to disprove facts necessary to establish the offense charged . . . ." *Banyard v. State*, 47 So. 3d 676, 684 (¶22) (Miss. 2010).

In *Reith v. State*, 135 So. 3d 862 (Miss. 2014), the supreme court reversed Robert Reith's conviction for murdering his ex-wife because the trial court granted an instruction that "[d]eliberate design may be presumed from the unlawful and deliberate use of a deadly weapon." *Id.* at 865 (¶¶5-6). The Court found that "instructions which allow the jury to presume guilt on an essential element of an offense run counter to our most basic tenet of criminal law." *Id.* (citing *Neal v. State*, 451 So. 2d 743, 757 (Miss. 1984)).

The Court in *Reith* further stated:

Throughout a criminal prosecution, there is only one presumption as to the defendant—"the presumption of innocence—that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.'" *In re Winship*, 397 U.S. 358, 363, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) (quoting *Coffin v. United States*, 156 U.S. 432, 453, 15 S.Ct. 394, 39 L.Ed. 481 (1895)). The "presumption of innocence . . . extends to every element of the crime." *Morissette v. United States*, 342 U.S. 246, 275, 72

S.Ct. 240, 96 L.Ed. 288 (1952).

*Reith v. State*, 135 So. 3d 862, 865 (¶7)(Miss. 2014).

In *Williams v. State*, 111 So. 3d 620 (Miss. 2013), the supreme court reversed Twonia Williams's conviction for deliberate design murder because of an instruction giving the State a presumption. Williams admitted that she shot and killed the victim. *Id.* at 624. Her defense at trial was that the killing was an accident, and therefore, she lacked the necessary intent for deliberate design murder. *Id.* However, the jury was instructed that "a person is *presumed* to have intended the natural and probable consequences of his voluntary and deliberate acts." *Id.* at 623. The supreme court agreed with Williams that the instruction shifted the burden to her to prove that she lacked the intent to kill the victim. *Id.* at 624-25. The Court held, "As a presumption is accepted as true without proof to the contrary, it follows that the burden was shifted to the defendant to provide proof." *Id.* at 625 (¶17).

Husband's case is similar. The burden was on the State to prove that Husband did not act in self-defense when he shot and killed Crenshaw. The trial court giving the State a presumption that the victim had a right to use whatever force he felt necessary against Husband shifted the burden to Husband, who had to overcome the presumption and prove that he acted in self-defense.

Because the Castle Doctrine instruction in favor of the victim should not have been granted to the State, Husband respectfully requests this honorable court reverse his conviction and remand his case for a new trial.

**Issue II:       The trial court erred in denying Husband's motion for directed verdict. The evidence was insufficient to support a finding that Husband was not acting in self-defense when he shot the decedent.**

"[T]he Due Process Clause of the Fourteenth Amendment protects a defendant in a

criminal case against conviction ‘except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.’” *Jackson v. Virginia*, 443 U.S. 307, 315 (1979), *quoting In re Winship*, 397 U.S. 358, 364 (1970); U.S. Const. amend. XIV. *See also, e.g., Jefferson v. State*, 556 So. 2d 1016, 1019 n.5 (Miss. 1989) (recognizing that Due Process Clause of Section 14 of Mississippi Constitution mandates proof beyond a reasonable doubt). As a general matter, “the relevant question” when assessing the constitutional sufficiency of the evidence supporting a conviction “is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson*, 443 U.S. at 319; *Wilson v. State*, 101 So. 3d 1182, 1185 (Miss. Ct. App. 2012).

Mississippi Code Annotated Section 97-3-15(1)(f) states that “the killing of a human ... shall be justifiable ... [w]hen committed in the lawful defense of one’s own person or any other human being, where there shall be reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be imminent danger of such design being accomplished.” Miss. Code Ann. § 97-3-15(1)(f). In certain cases, defendants are presumed to have acted under the belief that they were in imminent danger of great bodily injury. *See* §§97-3-15(3)-(4).

In order to convict Husband of manslaughter, the State was required to prove that he killed Crenshaw in the heat of passion and not in necessary self-defense. Husband was entitled to the presumption that he acted in reasonable fear of imminent death or serious injury when he shot Crenshaw because he was in his car, and Crenshaw was in the doorway of the car with a gun threatening him. *See* §97-3-15(3). Further, Husband had no duty to retreat under §97-3-15(4). He was not the initial aggressor nor was he engaged in unlawful activity.

The State did not present sufficient evidence to overcome the presumption that Husband acted in self-defense and that his action was reasonable under the circumstances of this case. The evidence showed that Crenshaw armed himself and was the initial aggressor. Husband had a right to defend himself and his stepson against Crenshaw, who was threatening him and who was armed. Husband admitted that he shot Crenshaw while he was in the doorway of Husband's car. Husband had no duty to retreat from Crenshaw. But he was prevented from leaving by Crenshaw, who stood between Husband and his car door, while holding a weapon and threatening Husband, who was at that point unarmed.

The State has not met its burden of proof to show that Husband did not act in self-defense when he killed Crenshaw. Therefore, Husband respectfully requests this Court reverse his conviction and sentence and enter a not guilty verdict in his case.

**Issue III: The trial court erred in denying Husband's motion for new trial. The overwhelming weight of the evidence shows that Husband acted in self-defense when he shot the decedent, who was standing in the door of Husband's car holding a gun.**

#### **Standard of Review**

"When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, [the appellate court] will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Davis v. State*, 158 So. 3d 1190, 1195 (¶19) (Miss. Ct. App. 2015) (quoting *Bush v. State*, 895 So. 2d 836, 844 (¶18) (Miss. 2005)). "This Court should grant a new trial only in exceptional cases in which the evidence preponderates heavily against the verdict." *Id.* "In considering the case, the evidence should be weighed in the light most favorable to the verdict." *Id.*

Further:

A reversal on the grounds that the verdict was against the overwhelming weight of the evidence, “unlike a reversal based on insufficient evidence, does not mean that acquittal was the only proper verdict.” *McQueen v. State*, 423 So. 2d 800, 803 (Miss. 1982). Rather, as the “thirteenth juror,” the court simply disagrees with the jury's resolution of the conflicting testimony. *Id.* This difference of opinion does not signify acquittal any more than a disagreement among the jurors themselves. *Id.* Instead, the proper remedy is to grant a new trial.

*Bush*, 895 So. 2d at 844.

The trial court erred in not granting Husband a new trial. The undisputed evidence in this case shows that Husband was attempting to leave. He had walked down the steps of the house to his car, and sat down in the driver's seat. Crenshaw followed Husband down the steps and went to Stokes's car to get her gun. Crenshaw armed himself, and then approached Husband at his car door, with his gun at his side. Crenshaw was the initial aggressor in this case, not Husband.

The disputed testimony comes in how Husband shot Crenshaw. Stokes testified that when McGowan came out onto the porch, Crenshaw put the gun in his pocket. However, Husband stated that the gun was not in Crenshaw's pocket; instead, it remained at Crenshaw's side. Husband testified that when Crenshaw turned to look at McGowan, he took his opportunity to shoot Crenshaw. He shot first to avoid being shot. Husband insists that the first shot he fired, in the doorway of the car, is the shot that hit Crenshaw. (Tr. 367-68).

The autopsy showed that Crenshaw was shot in the back. The testimony showed, though, that Crenshaw had turned away from Husband for a moment to look at McGowan on the porch of the home. The medical examiner testified that the injury could be consistent with Crenshaw being shot as he turned back to Husband. (Tr. 196).

Stokes and McGowan suggested in their testimony that Husband did not shoot Crenshaw immediately, as Husband claims, but that he shot Crenshaw as he was retreating. However,



testimony also shows that as he was moving away from Husband's car, after the initial shot, Crenshaw was trying to get his weapon to fire at Husband.

Husband testified that he was afraid that Crenshaw was going to kill him or his stepson. He shot at Crenshaw to avoid being shot first. Although Husband had no duty to retreat<sup>1</sup> from the scene, the evidence is clear that Crenshaw was preventing Husband from leaving the scene by standing in the door of the car with a gun, intimidating Husband and threatening him. Husband believed that he had no option other than to shoot Crenshaw to escape injury or death.

Because the evidence in this case weighs so heavily in favor of Husband and his assertion that he acted in self-defense, the trial court erred in denying Husband's motion for new trial. Husband respectfully requests this Court reverse his conviction and sentence and remand his case for a new trial.

**Issue IV: Husband received constitutionally ineffective assistance of counsel when his trial counsel failed to request a Castle Doctrine instruction on Husband's behalf and failed to object on proper grounds to the State's proposed Castle Doctrine instruction, depriving him of having the jury instructed on a presumption that would have benefitted his defense.**

#### **Standard of Review**

In determining ineffective assistance of counsel on direct appeal, the Court reviews the appellate record to determine if the defendant has been denied effective assistance. *Read v. State*, 430 So. 2d 832, 841 (Miss. 1983). If evidence of ineffective assistance of counsel is unclear from the record, the Court proceeds to review the other issues presented in the appeal. *Id.* If the case is reversed on other grounds, the ineffective assistance claim is moot. *Id.* However, if the

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<sup>1</sup> Mississippi Code Annotated section 97-3-15(4) states that a person who is not the initial aggressor and is not engaged in unlawful activity has no duty to retreat rather than using deadly force as long as the person is in a place where he has a right to be.

Court otherwise affirms the appeal, it does so without prejudice to the defendant's right to raise the ineffective assistance of counsel claim during post conviction proceedings. *Id.*

For ineffective assistance of counsel claims, the defendant must show “that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial.” *Strickland v. Washington*, 466 U.S. 668, 669 (1984).

The defense counsel's performance was deficient because he failed to offer a jury instruction on the Castle Doctrine presumption, which deprived Husband of his fundamental right to have a jury consider a theory of his defense. An accused has a fundamental right to have a jury instructions that present his theory of defense. *Murphy v. State*, 566 So. 2d 1201, 1206 (Miss. 1990). This Court has held that an accused has an absolute right to have the jury instructed on every lawful defense he chooses to assert, even if the defense is based on “meager evidence and highly unlikely.” *Satcher v. State*, 852 So. 2d 595, 599 (¶14) (Miss. Ct. App. 2002).

The instructions must find support in the evidence, not be covered elsewhere in the instructions, and must be supported by the evidence. *Heidel v. State*, 587 So. 2d 835, 842 (Miss. 1991). Trial counsel is responsible for preparing the appropriate jury instructions regarding the defense's theory of the case, and should not relinquish this duty to the trial court judge. *Staten v. State*, 989 So. 2d 938, 951 (¶10) (Miss. Ct. App. 2008).

Husband was entitled to the instruction. Section 97-3-15(3) provides a presumption that the defendant “reasonably feared imminent death or great bodily harm.” The statute extends the presumption to someone who is in his car if “the person against whom the defensive force was used, was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered . . . [the] occupied vehicle.” Additionally, section 97-3-15(4) provides that a person who

is not the initial aggressor in a confrontation and who is not engaged in unlawful activity, has no duty to retreat rather than use deadly force, as long as the person is in a place where he has a right to be. The statute prevents the fact finder from considering the defendant's failure to retreat as evidence that the use of force was unreasonable. *Id.* Husband had a right to be in his car, and he was not the initial aggressor.

Had Husband's trial counsel offered a Castle Doctrine instruction, the jury would have been instructed that if it believed Husband's version of the events surrounding his altercation with Crenshaw, then it should presume that Husband used defensive force against him because he reasonably feared imminent death or great bodily harm, or the commission of a felony upon him . . . or against the vehicle which he was occupying . . . ." *See Newell v. State*, 49 So. 3d 66, 78 (¶34) (Miss. 2010).

The Court reversed in *Newell*, holding that if the jury had been properly instructed on the Castle Doctrine presumption, the jury may have come to a different conclusion regarding the reasonableness and necessity of Newell's actions against Boyette. The Court held that this would have provided more weight to Newell's self-defense claims.

Husband had a fundamental right to have the jury instructed on his theory of the case. Husband's trial counsel failed to request any instruction on the Castle Doctrine or to make any argument that Husband was entitled to defend himself and had no duty to retreat from the situation before defending himself. Defense counsel's deficient performance prejudiced Husband; the jury was unable to consider this theory of defense when deliberating his case. The jury could have drawn a reasonable conclusion that Husband's actions were necessary self-defense from the specific facts of this case.

Additionally, Husband's trial counsel failed to properly object to the State's proffered

Castle Doctrine instruction. Had trial counsel objected on the proper grounds, it is likely that the trial court would have denied the jury instruction. Trial counsel objected to the State's instruction on the grounds that the State had failed to prove that Crenshaw was a resident of the house on Highway 13, where the shooting took place. (Tr. 390-91). However, the State had offered evidence that Crenshaw had been staying in the home with Stokes and that he intended to make the residence permanent. However, the question is not whether there was sufficient proof of Crenshaw's residence. The proper question was whether a Castle Doctrine instruction was a proper instruction for the State. The instruction was not proper. The Castle Doctrine deals with presumptions when a defendant has killed someone, ostensibly in self-defense. The victim was not charged with any crime, and therefore required no defense.

Had trial counsel objected properly to the instruction, it is possible that the trial court would have denied the instruction, resulting in a more properly instructed jury. With a properly instructed jury, it is more likely that Husband would have had a different result at trial.

Husband's trial counsel rendered constitutionally ineffective assistance of counsel that was prejudicial to Husband's defense. Because he did not receive effective representation at trial, Husband requests this Court reverse his conviction and sentence and remand his case for a new trial.

### **CONCLUSION**

Husband submits that based on the propositions cited and briefed above, together with any plain error noticed by this Court which has not been specifically raised but may appear to the Court on a full review of the record, the judgment of the trial court and Husband's conviction and sentence should be reversed and rendered. Alternatively, the conviction should be reversed and remanded to the trial court for a new trial.

Respectfully submitted,

**MALCOLM JAMAL HUSBAND, APPELLANT**

/s/ Mollie M. McMillin\_\_\_\_\_

Mollie M. McMillin, Appellant Counsel

**CERTIFICATE OF SERVICE**

I, Mollie M. McMillin, Counsel for Malcolm Jamal Husband, do hereby certify that on this day I electronically filed the forgoing **BRIEF OF THE APPELLANT** with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Honorable John R. Henry, Jr.  
Attorney General Office  
Post Office Box 220  
Jackson, MS 39205-0220

Further, I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above to the following non- MEC participants:

Honorable Prentiss Greene Harrell  
Circuit Court Judge  
Post Office Box 488  
Purvis, MS 39475

Honorable Haldon J. Kittrell  
District Attorney, District 15  
500 Courthouse Square, Suite 3  
Columbia, MS 39429

Malcolm Jamal Husband, MDOC #195530  
Jefferson County Correctional Facility  
Rt. 2, Box 29  
Purvis, MS 39475

This the 24th day of August, 2015.

/s/ Mollie M. McMillin  
Mollie M. McMillin, Appellant Counsel

Mollie M. McMillin, MS Bar No. 102708  
INDIGENT APPEALS DIVISION  
OFFICE OF STATE PUBLIC DEFENDER  
Post Office Box 3510  
Jackson, Mississippi 39207-3510  
Telephone: 601-576-4290  
Fax: 601-576-4205  
Email: mmcmi@ospd.ms.gov